

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

June 21, 2005

IN RE:

**JOINT PETITION OF HOLT & CO. INC. AND JACK W.
PRUITTE D/B/A FIRST PHONE FOR APPROVAL OF A
BUY/SALE AND TRANSFER OF CERTIFICATION**

)
)
)
)
)

**DOCKET NO.
04-00293**

**ORDER APPROVING TRANSFER OF AUTHORITY
AND CUSTOMER NOTICE LETTER**

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at the regularly scheduled Authority Conference held on January 31, 2005 for consideration of the *Joint Petition of Holt & Co. Inc and Jack W. Pruitte DBA First Phone for Approval of a Buy/Sale and Transfer of Certificate* (the "Joint Petition") filed by Holt & Co., Inc. ("Holt & Co.") and Jack W. Pruitte ("Jack Pruitte") (collectively the "Petitioners") for approval of a transfer of authority to provide utility services.

Background

Holt & Co. is a Kentucky corporation with principal offices located in Clarksville, Tennessee. Holt & Co. was granted authority to provide interexchange services in Tennessee under the name "First Phone" by Order dated September 11, 2001 in Docket No. 01-00615. Initially, First Phone was solely owned by David T. Holt ("David Holt"), and Jack Pruitte managed the operations of First Phone. In an agreement that became effective January 1, 2003, David Holt conveyed fifty percent of ownership of First Phone to Jack Pruitte. Jack Pruitte subsequently has negotiated with David Holt to purchase the remaining fifty percent ownership of First Phone.

Statutory and Regulatory Framework

The Petitioners submitted the *Joint Petition* pursuant to Tenn. Code Ann. § 65-4-112 (2004) and Tenn. Code Ann. § 65-4-113 (2004). Tenn. Code Ann. § 65-4-112(a) governs TRA approval of mergers or consolidations between two or more public utilities holding CCNs in the State of Tennessee. It provides as follows.

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

The provision is not applicable here. The transfer of ownership of First Phone to Jack Pruitte does not involve the lease, merger, or consolidation of property, rights, or franchises between two Tennessee public utilities

Instead, the transfer at issue in this docket is governed by Tenn. Code Ann. § 65-4-113 (2004). Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services (also known as a CCN). Tenn. Code Ann. § 65-4-113(a) provides as follows:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority. It states, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer.

Further, when the customer base of a telecommunications service provider is transferred, Tenn Comp. R & Regs 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria has been met:

2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

The Joint Petition

In the *Joint Petition* filed on September 16, 2004, the Petitioners propose to enter into an asset purchase agreement whereby Jack Pruitte will acquire sole ownership and all certificates and applicable tariffs of First Phone from David Holt.

According to the *Joint Petition*, Jack Pruitte has extensive experience in the telecommunications industry. He has been in charge of all operations as manager of Holt & Co since its inception in 2002. The *Joint Petition* also states that all customers will immediately be notified of the change in ownership in writing after the effective date. The customer notification letter is dated February 2, 2005 and indicates that the customer transfer will occur on March 2, 2005.

According to the Petitioners, Jack Pruitte's experience should insure the continuation of high quality and affordable telecommunications to customers of First Phone. The transfer will have a positive effect on the public by lowering customers' telephone bills.

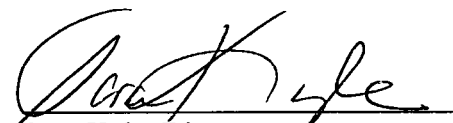
January 31, 2005 Authority Conference

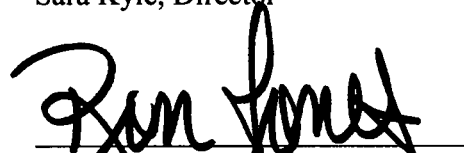
At the January 31, 2005 Authority Conference, the Panel voted unanimously to approve the *Joint Petition* pursuant to a finding of compliance with the requirements of Tenn. Code Ann. § 65-4-113 (2004). The Panel also approved the customer notification letter and waived the thirty-day notice requirement of Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d)(2) because the letter substantially complies with the TRA Rule.¹

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition of Holt & Co. Inc and Jack W. Pruitte DBA First Phone for Approval of a Buy/Sale and Transfer of Certificate* for approval of the transfer of authority described herein is approved.
2. The customer notice letter proffered by Jack W. Pruitte DBA First Phone is approved and the thirty-day notice requirement of Authority Rule 1220-4-2-.56(2)(d)(2) is waived.
3. Jack W. Pruitte DBA First Phone is required to file a tariff reflecting the decrease in rates described in the *Joint Petition*.


Deborah Taylor Tate, Director


Sara Kyle, Director


Ron Jones, Director

¹ The proposed letter submitted by the Petitioners would give customers 28 days notice of the transfer instead of the 30 day notice required by the Rule.